

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RALPH T. LINDER, JR.,

Plaintiff,

v.

NURSE CAROL, NURSE JUNE, NURSE
DARLENE, P. FRANKLIN, NURSE TRACY,
and L. KLUGEKA,

Defendants.

Case No. 3:15-cv-992-NJR-DGW

REPORT AND RECOMMENDATION

WILKERSON, Magistrate Judge:

This matter has been referred to United States Magistrate Judge Donald G. Wilkerson by United States District Judge Nancy J. Rosenstengel pursuant to 28 U.S.C. § 636(b)(1)(B), Federal Rule of Civil Procedure 72(b), and SDIL-LR 72.1(a) for a Report and Recommendation on the question of whether Plaintiff exhausted his administrative remedies prior to filing this lawsuit, as required by the Prison Litigation Reform Act, 28 U.S.C. § 1997e(a). For the reasons set forth below, it is **RECOMMENDED** that the Motion for Summary Judgment on the Issue of Exhaustion of Administrative Remedies filed by Defendants (who have appeared) be **MOOTED** (Doc. 37), that this matter be **DISMISSED** for want of prosecution, and that the Court adopt the following findings of fact and conclusions of law.

FINDINGS OF FACT

Plaintiff, Ralph T. Linder, Jr., who was formerly incarcerated at the Vienna Correctional Center, filed suit on September 8, 2015 pursuant to 42 U.S.C. § 1983 alleging that his constitutional rights were violated by various medical personnel at the prison who failed to treat a spider bite that occurred on August 14, 2014. Plaintiff claimed that the spider bite was not

addressed promptly, that it caused swelling, chest pain, and body pain, and that the wound was neither treated properly nor healed by the time he transferred from Vienna to Pinckneyville CC sometime after November 4, 2014. After an amended complaint was filed on November 5, 2015, his claims were screened pursuant to 28 U.S.C. § 1915A and he was permitted to proceed on one count of deliberate indifference, in violation of the Eighth Amendment, against each of the above Defendants (Doc. 12). Defendants filed the currently pending motion on September 12, 2016 (Doc. 37) and notified Plaintiff of the consequences of failing to respond (Doc. 39). No response has been filed as of this report and recommendation. On September 20, 2017, this matter was set for a hearing pursuant to *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008) (Doc. 42). The moving Defendants appeared by counsel. Plaintiff failed to appear.

CONCLUSIONS OF LAW

Plaintiff is failing to prosecute this action. Despite receiving a warning of the consequences of failing to respond, Plaintiff failed to respond to the motion for summary judgment. In addition, Plaintiff failed to appear for a duly noticed hearing. Therefore, pursuant to Federal Rule of Civil Procedure 41(b), this Court finds that Plaintiff is failing to prosecute this action. *See Aura Lamp & Lighting, Inc. v. International Trading Corp.*, 325 F.3d 903, 908 (7th Cir. 2003). Plaintiff was sufficiently warned about the consequences of failing to attend the *Pavey* hearing by the Order dated August 22, 2017 (Doc. 41). *See Fischer v. Cingular Wireless, LLC*, 446 F.3d 663, 665 (7th Cir. 2006).

RECOMMENDATIONS

It is **RECOMMENDED** that this matter be **DISMISSED** for want of prosecution, that Defendants' motion be deemed **MOOT**, and that the Court adopt the foregoing findings of fact and conclusions of law.

Pursuant to 28 U.S.C. § 636(b)(1) and SDIL-LR 73.1(b), the parties shall have fourteen (14) days after service of this Report and Recommendation to file written objection thereto. The failure to file a timely objection may result in the waiver of the right to challenge this Report and Recommendation before either the District Court or the Court of Appeals. *Snyder v. Nolen*, 380 F.3d 279, 284 (7th Cir. 2004); *United States v. Hernandez-Rivas*, 348 F.3d 595, 598 (7th Cir. 2003).

DATED: October 16, 2017



DONALD G. WILKERSON
United States Magistrate Judge